

**STATE OF WASHINGTON  
TRANSPORTATION COMMISSION  
OLYMPIA, WASHINGTON**

**REQUEST FOR PROPOSALS  
RFP NO. ACQ-2012-0525-RFP**

**FOR PERSONAL SERVICES**

**PROJECT TITLE: Road User Charge Assessment**

**PROPOSAL DUE DATE: No later than 3:30 pm (Pacific Time), June 22, 2012**

**EXPECTED TIME PERIOD FOR CONTRACT: August 2, 2012 through June 30, 2013.** WSTC reserves the right to extend the Contract for up to two (2) additional one (1) year periods. Amendments extending the period of performance, if any, shall be at the sole discretion of WSTC and shall be by written Amendment. The period of performance shall commence upon the date of the Office of Financial Management approval or date of final party signature, whichever is later.

**CONSULTANT ELIGIBILITY:** This procurement is open to those consultants which satisfy the minimum qualifications stated herein and which are available for work in Washington State.

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## Request for Proposals No. ACQ-2012-0525-RFP

### 1. INTRODUCTION

#### ***About the Washington State Transportation Commission:***

*The Washington State Transportation Commission is an independent, seven-member citizen body appointed by the Governor to provide a public forum for transportation policy development. It reviews and assesses how the entire transportation system works across the state, issues the state's 20-year Transportation Plan, and designated in law as the State Tolling Authority, sets tolls for state highways and bridges and fares for Washington State Ferries<sup>1</sup>.*

The Washington State Transportation Commission hereafter called "AGENCY," is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in participating on a project to examine the feasibility of a potential Road User Charge<sup>2</sup> system for Washington State.

#### **1.1 BACKGROUND**

Public officials in Washington State are increasingly concerned with shortfalls in transportation revenues that are forecasted through the next decade and beyond. Of particular concern is the potential for a sharp decline in revenues generated from the gas tax per each mile driven. Advances in automotive technology, including alternative fuel vehicles and much greater fuel efficiency from gas-powered vehicles, will result in less gasoline and diesel fuel consumption per capita. The Commission, the Legislature and the Governor have each recommended the state pursue a variety of new revenue sources, including exploration of a mileage-based funding system to possibly replace the gas tax.

In 2009, the Washington State Legislature commissioned a study to identify alternative transportation funding methods and techniques capable of supplementing current funding levels while proving more resilient against improving fuel economy in the automotive vehicle fleet<sup>3</sup>. The final report identified a transportation revenue "risk scenario" – which forecasted transportation revenue yields from a vehicle fleet that was assumed to have much greater than average fuel economy. When compared against the base revenue forecast from a 2007 financing study, this Risk Scenario would result in a revenue shortfall of over \$3.8 billion in the state's highway fund over the 16 year capital construction planning horizon<sup>4</sup>.

Since the release of this report, in late 2011 the federal government and the automotive manufacturing industry announced new Corporate Average Fuel Economy (CAFE)

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<sup>1</sup>For more information about the Transportation Commission, go to <http://wstc.wa.gov/>

<sup>2</sup> For definition of Road User Charge, see Section 1.6

<sup>3</sup> [http://www.leg.wa.gov/JTC/Documents/Studies/ImplementingALtFunding\\_FinalReportJan2010.pdf](http://www.leg.wa.gov/JTC/Documents/Studies/ImplementingALtFunding_FinalReportJan2010.pdf)

<sup>4</sup> See page ES-4 of Joint Transportation Committee's, *Implementing Alternative Transportation Funding Methods*, Final Report, January 2010

standards that would require an average fuel efficiency of 35.7 MPG by 2015, and 54.5 MPG by 2025. The Risk Scenario identified in the Alternative Financing Study had assumed a *lower* MPG, meaning the possibility of even greater shortfalls in expected transportation revenues is highly likely.

In response to chronic shortages in transportation accounts that are used for the upkeep and maintenance of highways, bridges and marine vessels (ferry) and operations, in 2011 Governor Chris Gregoire convened a select panel of business and government officials and charged them with developing a 10-year transportation funding strategy. Their focus aimed at restoring and maintaining base levels of transportation services that had seen sharp decreases since 2007, and developing an approach to make strategic improvements in Washington's transportation system targeted at economic growth and job creation. The Connecting Washington Task Force deliberated throughout the remainder of 2011, and issued its report and recommendation in January, 2012<sup>5</sup>.

Among its findings, the Task Force expressed deep concern over the lack of maintenance and preservation funding to operate the existing transportation system. To the extent transportation funding has been increased over the last decade, the vast majority of the revenue has been leveraged through bond issuances, the proceeds of which have largely been spent on system expansion and improvements. There was much discussion about how the existing surface transportation system could and should function as a public utility, with adherence to lifecycle cost methodologies to guide maintenance and reinvestment in the roadway system. While it was generally acknowledged that managing the transportation system as a true public utility – where users of the system are charged an amount based on actual consumption, and the proceeds reinvested to maintenance adequate service levels – was not, in their view, likely to occur within the 6-10 year horizon of the Connecting Washington's investment plan, it was deemed an important tax and transportation policy issue that should be fully explored<sup>6</sup>.

In the 2012 Legislative session, the Governor proposed a transportation tax package that would have bolstered funding for transportation accounts over the next six years. Included in the proposal was a directive to the Washington State Department of Transportation (WSDOT) to develop and implement a pilot project that would test a pay-by-the-mile Road User Charge system, to be applied to electric vehicles that currently pay no taxes dedicated to highway upkeep<sup>7</sup>. Until implementation of a Road User Charge system, electric vehicles would be required to pay an annual \$100 fee at the time of vehicle license renewal, the proceeds of the fee to be deposited into the state highway fund.

Although the Governor's proposed funding package was not enacted, several of its components were incorporated into other legislation. The annual \$100 fee on fully-

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<sup>5</sup> [http://www.governor.wa.gov/priorities/transportation/connect/final\\_report.pdf](http://www.governor.wa.gov/priorities/transportation/connect/final_report.pdf)

<sup>6</sup> Recommendation 6, found on page 3 of Executive Summary:

[http://www.governor.wa.gov/priorities/transportation/connect/final\\_report.pdf](http://www.governor.wa.gov/priorities/transportation/connect/final_report.pdf)

<sup>7</sup> House Bill No. 2660, Washington State Legislature, 2012 regular session (see also: Senate Bill No. 6455).

electric vehicles (EV) was enacted<sup>8</sup>, over objections from stakeholders in the energy, environment and automotive industries. Electric Vehicle associations (such as Seattle EV Association and Plug-in America) as well as individual EV drivers agreed with the principle that all drivers should pay for roadway use; they disagreed with the method of taxation: a lump sum tax, paid annually rather than periodically, that is not apportioned according to actual vehicle usage. These groups and individuals expressed support for a mileage-based user fee system that charges drivers of all vehicles – including EVs – based on actual usage rather than mere ownership of the vehicle.

The sentiments expressed during the public hearings on the \$100 Electric Vehicle Fee also were reflected in public opinion surveying conducted by the Washington State Transportation Commission (WSTC) during the summer and fall of 2011<sup>9</sup>. The broader survey topic was aimed at assessing public attitudes and support for increased transportation taxes and investments. From this work, the Commission clearly heard public sentiment that all drivers should pay for roadway use, and electric vehicle and other alternative fuel vehicles should pay their fair share.

Public opinion surveying has been used in Washington State since 2007 when the WSTC created the Ferry Riders Opinion Group (FROG) which is an online survey panel made up of over 6,000 ferry riders. Panel members are surveyed throughout each year and the data is submitted to the Legislature and Governor to enhance and inform policy and budget decision making. Having statistically valid data is a powerful indicator of public support and sentiment on key issues. The Legislature has become quite accustomed to utilizing public opinion data and using it to guide discussions, as demonstrated by the additional funding the WSTC received in 2012<sup>10</sup> to establish a similar online survey panel made up of residents from across the state. The goal is to have over 15,000 people join the panel and participate in quarterly surveys on statewide transportation policy and fiscal issues.

Another key component of the Governor's proposal that emerged in other legislation was the directive to explore a Road User Charge system as a potential future funding mechanism for transportation. HB 2704<sup>11</sup>, sponsored by Representative Andy Billig (D-Spokane), proposed a statutory Task Force charged with examining how a Road User Charge<sup>12</sup> system might be developed for future use in Washington State. While various drafts of the legislation changed the composition, funding and governance of the Task Force, all versions were clearly aimed at *future* funding options, rather than a near-term horizon (six years or less).

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<sup>8</sup> Section 10 of Engrossed House Bill 2660 (Laws of 2012)

<sup>9</sup>[http://wstc.wa.gov/StudiesSurveys/StatewideTransportationSurvey/documents/2012\\_0209\\_WSTCSurveyReport.pdf](http://wstc.wa.gov/StudiesSurveys/StatewideTransportationSurvey/documents/2012_0209_WSTCSurveyReport.pdf)

<sup>10</sup> (See Section 205 (5) of SHB 2190: <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202012/2190-S.SL.pdf>)

<sup>11</sup> House Bill 2704 can be found at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=2704&year=2011>

<sup>12</sup> The language of HB 2704 refers to a “road user assessment.” We have changed the word “assessment” to “Charge” within this RFP to help Proposers understand the direct linkage between HB 2704, transportation industry terminology, and this current work effort.

As HB 2704 worked its way through the House of Representatives, it became clear that more scoping, planning and initial issue-identification work would be required before the Legislature would create a permanent, statutory Task Force to take on the issue. As a result, the 2011-13 Supplemental Transportation budget provided initial seed funding and legislative direction to both the Transportation Commission<sup>13</sup> and WSDOT<sup>14</sup> to begin the initial scoping and preparatory work of a Road User Charge system.

The budget directs the Transportation Commission to convene a Steering Committee for the purpose of reviewing, analyzing and assessing the feasibility of a Road User Charge system for Washington State. Having the Washington State Transportation Commission serve in this role is consistent with the Commission's responsibility to provide a public forum for development of transportation policy. It also was recognized that the Commission, as the tolling authority for state highways, bridges and tunnels, is well-versed in the policy considerations related to financing, maintaining and preserving transportation facilities with user fees.

WSDOT's Public/Private Partnerships Office is charged with exploring innovative or alternative funding and financing options for state-owned transportation infrastructure and services. The Partnerships Office has been leading the agency's research of potential Road User Charge systems, including collaboration with other states and the federal government. To support this work, WSDOT is tasked with the technical and administrative aspects of the feasibility assessment, which will be conducted in coordination with the Commission and the Steering Committee.

A work plan and the need for additional funding to continue the Road User Charge Study will be proposed to the 2013 Legislature for the 2013-15 biennium, and possibly for subsequent biennia as well. Continued funding will depend on legislative response to the work plan that the Steering Committee and WSTC will propose in January 2013.

## **1.2 PURPOSE**

This project is intended to provide technical and transportation policy expertise necessary to help inform and advise the Steering Committee and WSTC in its examination of the operational, technical and administrative feasibility and policy implications of a potential Road Usage Charge (RUC) system for Washington State, including an assessment of public perspectives and sharing of information related to RUC concepts.

The project is expected to result in findings, recommendations and a report to the Transportation Commission, the Governor and the Washington State Legislature on the feasibility of implementing a RUC system in the future, either separately or in conjunction with other states. An initial report in January 2013 will identify recommended next steps for legislative consideration, including a research and development plan and a proposed budget for examining the issue in more depth and/or

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<sup>13</sup> ESHB 2190, Section 205(4)

<sup>14</sup> ESHB 2190, Section 214(1)

experimenting with such a system through technology demonstrations, pilot projects or system trials.

### **1.3 MINIMUM QUALIFICATIONS**

The Consultant must be licensed to do business in the State of Washington. The Consultant must have experience that correlates to the following areas:

- (1) **Transportation Revenue and Policy:** demonstrated experience in federal and state-level transportation revenue and policy development;
- (2) **Public Opinion and Information:** demonstrated experience in assessing public opinion and consumer acceptance;
- (3) **Road User Charge Technology:** demonstrated experience in technologies relevant to implementing a Road User Charge, such as in-vehicle telematics, network communications protocols, back-office transaction processing, toll system development, etc.

Consultants who do not meet these minimum qualifications shall be deemed non-responsive and will not receive further consideration.

### **1.4 FUNDING**

The AGENCY has budgeted an amount not to exceed **\$875,000** for this project. Proposals in excess of this amount will be rejected as non-responsive.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

### **1.5 PERIOD OF PERFORMANCE**

The period of performance of any contract resulting from this RFP is tentatively scheduled for August 2, 2012 to June 30, 2013. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY. The AGENCY reserves the right to extend the contract for two (2) one (1)-year periods. The period of performance shall commence upon the date of the Office of Financial Management approval or date of final party signature, whichever is later.

### **1.6 DEFINITIONS**

Definitions for the purposes of this RFP include:

**Agency** – The Transportation Commission is the AGENCY of the State of Washington that is issuing this RFP.



**Consultant** – Person or company submitting a proposal in order to attain a contract with AGENCY.

**Contractor** – Person or company whose proposal has been accepted by the AGENCY and is awarded a formal written contract.

**Request for Proposals (RFP)** – Formal procurement where a service or need is planned but no specific service or method has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

**Road User Charge** – For purposes of this RFP<sup>15</sup>, a Road User Charge is a method or system for measuring, assessing, collecting and reporting a transportation tax that is calculated based on the mileage driven in a specific vehicle. For purposes of this RFP, a Road User Charge is synonymous with a Mileage-Based User Fee.

## **2. GENERAL INFORMATION FOR CONSULTANTS**

### **2.1 RFP COORDINATOR**

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon receipt of this RFP shall be with the RFP Coordinator, as follows:

RFP COORDINATOR	Tim Carroll
AGENCY NAME	Washington State Dept. of Transportation
ADDRESS for U.S.P.S.	PO Box 47408, Olympia, WA 98504
Physical Address for Delivery:	719 Sleater Kinney Road, SE Suite 200 Olympia, WA 98503
PHONE:	(360) 705-7595
FAX:	(360) 705-6842
INTERNET ADDRESS:	Carrollt@wsdot.wa.gov

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFP Coordinator.

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<sup>15</sup> We recognize that a more precise definition of a Road User Charge would also include several other methods of collecting taxes and fees from drivers based on their specific use of a segment(s) of roadway.

Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

## **2.2 SUBMISSION OF PROPOSALS**

Consultants are required to submit six (6) copies of their proposal. Two copies must have original signatures and four copies can have photocopied signatures. The proposal, whether mailed or hand delivered, must arrive at the AGENCY no later than 3:30 p.m., Pacific Time, on June 22, 2012.

The proposal is to be sent to the RFP Coordinator at the address noted in Section 2.1 above. The envelope should be clearly marked to the attention of the RFP Coordinator.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Consultants assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. **Proposals may not be transmitted using electronic media such as facsimile transmission.**

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

## **2.3 PROPOSAL FORMAT**

All proposals must be on eight and one-half by eleven (8 1/2 x 11) inch paper and placed in binders with tabs separating the major sections of the proposal. The four major sections shall include:

- 1) Letter of Submittal, including signed Certifications and Assurances (Exhibit A of this RFP);
- 2) Technical Proposal, which must include responses to each of the following areas that Consultant is proposing to undertake:
  - Policy Assessment Proposal (see 3.1.1);
  - Public Opinion and Information Assessment Proposal (see 3.1.2); and
  - Technical and Administrative Assessment Proposal (see 3.1.3);
- 3) Management Proposal; and
- 4) Cost Proposal.

Responses to each question or request for information in the proposal must appear in the order presented in this RFP with the same headings used herein. This will not only be helpful to the evaluators of the proposal, but should assist the proposer in preparing the response.

## **2.4 LETTER OF SUBMITTAL (MANDATORY)**

The letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

- 1) Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- 2) Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
- 3) Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- 4) Federal Employer Tax identification (UBI) number issued by the State of Washington Department of Revenue.
- 5) Location of the facility from which the Consultant would operate.
- 6) Identify any State employees or former State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists; the Consultant may be disqualified from further consideration for the award of a contract.
- 7) Statement indicating as a condition of contract award, Contractor will register with the Office of Financial Management as a Statewide Vendor within ten (10) business days of notification of contract award.

## **2.5 SIGNATURES**

The Letter of Submittal and the Certifications and Assurances form must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

## **2.6 MANDATORY LETTER OF INTENT**

Consultants wishing to participate in this process must provide a written Letter of Intent to Propose. The letter must be received by 3:30 P.M., Pacific Time, on the date specified in the "Schedule" (Section 2.7). Failure to submit a Letter of Intent will result in disqualification from further participation in this RFP process. Submission of a Letter of Intent constitutes the Consultant's acceptance of the procedure, review criteria, and administrative instructions of this RFP. The Consultant must identify an individual as their Authorized Representative. This individual will be the point of contact for communication purposes, between the Consultant and the Agency RFP Coordinator during this RFP process.

Include the following information in the Letter of Intent to Propose:

Consultants Name:

Consultants Authorized Representative for this RFP  
Person's Name and Title  
Address  
Telephone Number  
Fax Number  
Statement of Intent to Propose

## **2.7 ESTIMATED SCHEDULE OF ACTIVITIES**

Issue Request for Proposals	5/25/2012
Questions due (can be faxed)	5/30/2012
Answers sent out	6/4/2012
Issue addendum to RFP (if applicable)	6/6/2012
Mandatory Letter of Intent Due	6/8/2012
Proposals Due	6/22/2012 (3:30 PM PST)
Evaluate Proposals	6/25/2012 through 7/6/2012
Conduct oral interviews with finalists, if required	7/9/2012
Announce "Apparent Successful Contractor" and send via email "Notification of Unsuccessful Consultant" letters	7/11/2012
Hold Debriefing Conferences (if requested)	7/16/2012
Negotiate Contract	7/12/2012 through 7/16/2012
File contract with OFM and JLARC (if required)	7/19/2012
Begin Contract Work	8/2/2012

The AGENCY reserves the right to revise the schedule.

## **2.8 FAILURE TO COMPLY**

The Consultant is specifically notified that failure to comply with any part of the Request for Proposals may result in rejection of the proposal as non-responsive.

## **2.9 REVISIONS TO THE RFP**

The AGENCY reserves the right to revise the RFP and/or to issue addenda to the RFP. For this purpose, the published questions and answers that were submitted to the Agency and other pertinent information shall be provided as an addendum to the RFP.

The AGENCY also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.10 ACCEPTANCE PERIOD**

Proposals providing less than ninety 90 days for acceptance by AGENCY from the due date set for receipt of proposals will be considered non-responsive and will be rejected. Proposals that do not address all areas requested by this RFP may be deemed non-responsive and may not be considered for a possible contract resulting from this RFP.

## **2.11 REJECTION OF PROPOSALS**

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP. The AGENCY also reserves the right at its sole discretion to waive minor administrative irregularities contained in any proposal.

## **2.12 MOST FAVORABLE TERMS**

The Agency reserves the right to make an award without further discussion of the proposal submitted. An exception is that the RFP Coordinator may contact the Consultant for clarification of a portion of the Consultants proposal. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. There will be no best and final offer process.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some of or the Consultant's entire proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

## **2.13 OBLIGATION TO CONTRACT**

This RFP does not obligate the State of Washington or the AGENCY to contract for service(s) specified herein.

## **2.14 COSTS TO PROPOSE**

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

The AGENCY also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract. In the event it becomes necessary to revise any part of the RFP, addenda will be provided to all those who received the RFP.

## **2.15 COMMITMENT OF FUNDS**

The Executive Director of the AGENCY or her delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

## **2.16 RESPONSIVENESS**

A checklist for responsiveness is attached as Exhibit B to assist the Consultant in preparing the proposal.

## **2.17 INSURANCE COVERAGE**

Each Consultant must indicate in the letter of submittal and as a condition of contract award, that they will provide proof of insurance from the Consultant's insurance carrier, outlining the extent of Consultant's liability coverage. The Contractor shall, at its own expense, obtain and keep in force liability insurance during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance is in full force, and a copy shall be forwarded to the Agency within fifteen (15) days of the contract effective date. Include the proof of insurance as an Appendix to the proposal.

### **Liability Insurance:**

- 1) Commercial General Liability Insurance: Contractor shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

**Employers Liability ("Stop Gap") Insurance:** In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

### **Additional Provisions**

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, WSTC, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
2. **Cancellation.** State of Washington, WSTC, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the

following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.

3. **Identification.** Policy must reference the state's contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by WSTC Risk Manager or the Risk Manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC
5. **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

#### **Worker's Compensation Coverage**

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsible in any way for claims filed by the Contractor or their employees for service(s) performed under the terms of this contract.

## **2.18 CONTRACTOR QUESTIONS**

Specific questions concerning this RFP must be submitted, in writing to the RFP Coordinator by the date and time set forth in the *Estimated Schedule of Procurement Activities, Section 2.7*. Questions may be transmitted by facsimile or electronic mail. Only written questions will receive official written responses. Copies of all written questions and the Agency's responses will be posted on the Washington Electronic Business Solutions (WEBS) electronic notification system. Only posted answers to questions will be considered official.

## **2.19 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES**

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize

themselves with the requirements prior to submitting a proposal that includes current or former state employees.

## **2.20 ELECTRONIC PAYMENT**

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

## **2.21 REGISTER AS A STATEWIDE CONTRACTOR**

The Apparently Successful Contractor must agree to register with the Washington State Office of Financial Management (OFM) as a statewide Vendor within ten (10) business days of notification of contract award.

### **3. TECHNICAL PROPOSAL (Mandatory)**

#### **3.1 PROJECT SCOPE OF WORK**

This Project contains three distinct Scopes of Work. One objective of this Request for Proposals is to combine available funding sources in order to receive a comprehensive proposal from Consultants or Consultant Teams who are expertly qualified to carry out each Work Scope under a single unified proposal and contract. This is the AGENCY's preference. However, the AGENCY considers these Work Scopes severable, and reserves the right to contract for each Scope of Work separately and independent from the others.

Consultants should submit a comprehensive work plan detailing the proposed approach, objectives, tasks, timelines and deliverables in the Scopes of Work identified below:

1. Initial Policy Assessment and Feasibility Analysis;
2. Public Opinion and Information Assessment; and
3. Technical and Administrative Assessment and Preliminary Operational Concept.

The Scopes of Work identified below in Sections 3.1.1, 3.1.2 and 3.1.3 are the minimum project scopes. The Agency also is interested in responses describing any other important and relevant work that can be accomplished within budget and time limitations.

##### **3.1.1. Initial Policy Assessment and Feasibility Analysis**

Under the guidance and direction of the Steering Committee, the Consultant must provide technical expertise, policy analysis and advice to the Steering Committee to help them



understand, discuss and evaluate a potential Road User Charge (RUC) concept. The Consultant must assist the Steering Committee to:

- a) Clearly define the primary transportation policy objectives of a potential RUC for Washington state;
- b) Identify key policy issues to be resolved regarding a potential RUC in Washington state, such as public acceptability, equity and fairness, use of revenue, privacy, governance, suitability for local transportation funding, etc.;
- c) Identify potential benefits, drawbacks and concerns; and
- d) Assist the Steering Committee in making findings and recommendations, including development of a plan for further evaluation, refinement and system-wide trials of a Road User Charge in Washington.

It is expected that the Consultant will provide or arrange for all necessary presentations, briefing papers, synthesis reports and other informative materials to help educate the Steering Committee members on the topic of Road User Charge systems in the U.S. and internationally.

The Consultant also must possess subject matter expertise on existing and alternative state transportation funding mechanisms, in order to assist the Steering Committee in identification of policy issues, tradeoffs and considerations necessary to assess the feasibility and desirability of transitioning to a RUC system in the future.

### **3.1.2. Public Opinion and Information Assessment**

The Consultant must present a plan for how to assess public perspectives and provide public information, outreach, and education regarding the current transportation funding system in Washington state, and options for a new Road User Charge system.

The WSTC will have a statewide transportation survey panel in place from which over 15,000 residents can be accessed to gather public opinion data. This survey panel will be available for use for this project. Proposals should consider how the panel will be used and the frequency of use contemplated.

### **3.1.3. Technical and Administrative Assessment and Preliminary Operational Concept**

Taking into consideration the policy issues, assumptions and/or preferences identified by the Steering Committee under Work Scope 3.1.1 and 3.1.2, the Consultant must conduct a technology and administrative feasibility assessment that will, at a minimum, address the three areas identified below (a through c):

**a) Technology Assessment:** The Consultant must assist the State in identifying the necessary technologies and preferred methods for collecting a RUC. The work plan must detail the technology issues that must be considered in developing a preliminary operational concept, such as gross vs. differentiated mileage reporting capabilities, protecting consumer privacy, etc.

**b) RUC Administration Assessment:** The Consultant must assist the State in assessing responsibilities and capabilities of existing public agencies to implement and administer a RUC system, and recommend a process for assessing, invoicing, collecting, remitting and ensuring compliance with a RUC. The work plan must detail the key administrative and collection issues that must be identified and assessed, such as costs, interface with existing gas tax collections and refund system, etc.

**c) Multi-state and Federal Standards:** The Consultant must assist the State in identifying key elements of a RUC likely to be required for interoperability/compatibility with other states, and recommend methods to ensure coordinated development. The work plan must describe key issues related to imposing and collecting a RUC on a multi-state basis, and key standards that must be developed, including those at the federal level.

Based on the information gleaned from this Work Scope, and with inputs and assumptions derived from the Initial Policy Assessment Scope of Work, the Consultant must prepare a preliminary, or sketch-level operational concept for a RUC system in Washington.

### **3.2 WORK PLAN**

The technical proposal must contain all work or project requirements necessary to accomplish the scope of work defined in this RFP. Include a complete description of the proposed approach and methodology for the project, all project requirements, and the tasks required to accomplish the project. The plan must be in sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to the project. Include any required involvement of WSTC or WSDOT staff.

The Consultant may present any creative approaches that might be appropriate. The Consultant also may provide supporting documentation pertinent to this RFP.

### **3.3 SCHEDULE**

Provide a separate schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided. Take into consideration the minimum deliverables and deadlines listed in Section 3.4, and the following tentative schedule of key meetings that will likely require Consultant attendance and participation:

**Steering Committee meetings.** Assume six (6) full-day meetings over 12 months (all dates tentative):

- Thursday, September 13, 2012 – greater Seattle area;
- Tuesday, October 30, 2012 – greater Seattle area;
- Tuesday, December 4, 2012 – Olympia;
- Friday, January 25, 2013 - Olympia;
- March, 2013 (TBD)
- May, 2013 (TBD)

**Transportation Commission meetings.** (Generally a one hour update is required):

- October 16 or 17, 2012 - Olympia
- December 11 or 12, 2012 - Olympia

**Legislative meetings.** (Generally a 30 minute presentation, during a 2-hour meeting):

- January 2013 (exact date TBD) - Olympia

### **3.4 DELIVERABLES**

At a minimum, the Contractor shall be responsible for submitting the following draft reports and a final report (deliverable):

- (1) Report on status of RUC activities, pilots and programs occurring around the United States and in other countries;
- (2) Preliminary Feasibility Assessment Report (including basic determination of whether a RUC is feasible in Washington State);
- (3) Project work plan and estimated budget for two-year period, 2013-15, if Preliminary Report indicates basic feasibility; and
- (4) Final Report, including: (a) recommended policy parameters; (b) baseline public opinion/consumer acceptance assessment; and (c) preliminary operational concepts.

Deliverable 1 must be completed in advance of the September 2012 Steering Committee Meeting. Deliverables 2 and 3 must be completed by January 7, 2013. Deliverable 4 must be completed no later than June 15, 2013.

The Contractor may propose other deliverables that are believed to add value to the overall project and purpose of this work. The Contractor should make every effort to ensure all deliverables have independent, stand-alone utility in the event that the Legislature does not provide funding for additional work in the 2013-15 biennium.

## **4. MANAGEMENT PROPOSAL (Mandatory)**

The AGENCY requires the Consultant to make arrangements for all Steering Committee meetings, including locations, materials production and copying, meeting rooms, lighting, sound, A/V systems, etc. Proposers must explicitly detail who will be handling the tasks of reserving meeting facilities and providing support. The AGENCY does not intend to provide secretarial or other meeting logistics support. Proposers would be well-advised to specifically identify the individual or firm that has local knowledge of meeting facilities in the greater Puget Sound area and will be providing this type of meeting support.

Provide all information requested in the exact order specified below:

### **4.1 IDENTIFYING INFORMATION**

- 4.1.1 State the business name, address, principal place of business, telephone number, and fax number of legal entity or individual with whom contract would be written.
- 4.1.2 Provide the names, addresses, and telephone numbers of principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
- 4.1.3 Specify the legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- 4.1.4 Describe the proposing organization including size, areas of specialization and expertise, client base, and any other pertinent information in such a manner that the proposal evaluators may reasonably formulate a determination about the stability and financial strength of the proposing organization.
- 4.1.5 Include the Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
- 4.1.6 State the location of the facility from which the Consultant would operate.
- 4.1.7 If the Consultant or any party named previously contracted with the State of Washington during the past 24 months, indicate the name of the agency, the contract number and description and/or other information available to identify the contract.
- 4.1.8 If the Consultant or any party named previously was an employee of the State of Washington during the past 24 months, or is now an employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
- 4.1.9 Consultants which employ or have on their governing board State employees or former State employees, as of the date of their proposal, shall identify such persons and their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration of a contract.

## **4.2 PROJECT MANAGEMENT**

- 4.2.1 Provide a description of the proposed project staffing/organization and internal controls to be used during the course of the project, including any subcontractors.

- 4.2.2 State the name, the title or position, and telephone number of the individual who would have primary responsibility for the project resulting from this RFP. Disclose who within the firm will have prime responsibility and final authority for the work under the proposed contract. Name other individuals providing service on the project.
- 4.2.3 Identify responsibilities and qualifications of staff who will be assigned to the potential contract and the amount of time each will be assigned to the project. Provide resumes' for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.
- 4.2.4 Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management.

#### **4.3 EXPERIENCE OF THE CONSULTANT**

- 4.3.1 Indicate the experience the Consultant has in the following areas:

Transportation Revenue and Policy (Work Scope 3.1.1):

- Assisting states to examine transportation revenue and policy issues;
- Consulting, facilitating and managing a large (20-member) task force, commission or similar working group charged with developing transportation funding recommendations at the state and national level;
- Advising government on policy issues and systems that collect charges from drivers based on their vehicle miles traveled; and
- Involvement in multi-state collaborations, organizations or associations on the topic of mileage-based user fees.

Public Opinion, Public Information and Consumer Acceptance (Work Scope 3.1.2):

- Conducting initial or baseline public attitude and acceptance assessments;
- Public opinion research on transportation taxation and policies; and
- Development, production and dissemination of public information materials intended to educate the public on important transportation issues.

Technical and Administrative Assessment (Work Scope 3.1.3):

- Assessing and recommending technology solutions designed to charge, process, and invoice transportation user charges, especially a system that levies according to miles traveled;
- Working with other states that are examining, testing or designing a road user charge system that could be applied on a multi-state, regional or national basis; and
- Analyzing potential business models for developing and implementing a Road User Charge system that is capable of achieving commercial viability, including public acceptance.

- 4.3.2 Indicate any other experience that demonstrates the qualifications of the Consultant for the performance of the potential contract.
- 4.3.3 List contracts the Consultant may have had during the last five years that relate to the Consultant's ability to perform the service(s) called for under this RFP. List contract reference numbers, contract period of performance, contact persons, and telephone numbers.
- 4.3.4 Consultant must supply names, addresses and telephone numbers of three business references for whom work has been accomplished and briefly describe the type of service provided. The Consultant must grant permission to the AGENCY to contact the references. Do not include current AGENCY staff as references.
- 4.3.5 If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Preparers, or (b) litigated and such litigation determined that the Preparers was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

#### **4.4 SUBCONTRACTOR INFORMATION REQUIRED**

In the event the Consultant intends to subcontract any of the proposed work stated in its technical proposal, the Consultant shall submit the information required in Sections 4.1 and 4.3 of this section for each proposed subcontractor.

#### **4.5 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION**

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by Contractors certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. For information on certified Contractors, contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov>.

### **5. COST PROPOSAL (Mandatory)**

#### **5.1 IDENTIFICATION OF COSTS**

In this section of the proposal, the Consultant is to identify all costs to be charged for performing the tasks necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs and any non-labor expenses necessary to accomplish the tasks and to produce the deliverables under the contract.

#### **5.2 FUNDING AVAILABLE**

The maximum fee for this contract must be **\$875,000** or less to be considered responsive to this RFP.

#### **5.3 RATES**

Proposed staff should be identified by name, hourly rate, and expected use during contract performance. The Contractor shall charge the AGENCY only for staff specifically authorized by the AGENCY to perform work at the rates set forth in the contract.

#### **5.4 AWARD NOT BASED ON PRICE ALONE**

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP.

## **5.5 STATE SALES TAX**

Consultants are required to collect and pay Washington state sales tax, if applicable.

## **5.6 SUBCONTRACTORS**

If one or more subcontractors certified by the Office of Minority and Women's Business Enterprises are proposed, the Consultant must set out in the Cost Proposal the portion to be paid to the certified MBE and/or the WBE firm. Costs for subcontractors which are not certified are also to be broken out separately.

## **5.7 COMPUTATION**

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section. The result is the number of points awarded to the Consultant for this section. See the example below:

<b>Example:</b> Total points for cost section equals 25			
Lowest bid	=	\$1,500	
Consultant's bid	=	\$2,000	
\$1,500 divided by \$2,000	=	0.75	
0.75 x 25 points possible	=	18.75 points for the	cost proposal

# **6. EVALUATION AND CONTRACT AWARD**

## **6.1 EVALUATION TEAM**

The evaluation of proposals shall be accomplished by an evaluation team, to be designated by the AGENCY, which will determine the proposal most responsive to the requirements stated in this RFP. Proposals will be evaluated strictly in accordance with the requirements set forth in this RFP and any addenda which are issued.

## **6.2 RESPONSIVENESS**



All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in the RFP. Only responsive proposals which meet the minimum requirements will be forwarded to the evaluation team for further review. See Exhibit B for a checklist of responsiveness.

### **6.3 ORAL PRESENTATIONS MAY BE REQUIRED**

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top scoring finalists for an oral presentation and final determination of contract award. Commitments made by the Consultant at the oral interview, if any, will be considered binding. The scores from the written evaluation and the oral presentation combined together will determine the apparent successful Vendor.

### **6.4 AWARD BASED ON MULTIPLE FACTORS**

As stated previously, the evaluation process is designed to award the contract to the Consultant whose proposal best meets the requirements of this RFP. **The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by the AGENCY, which will determine the ranking of the proposals.**

AGENCY, at its sole discretion, may elect to select the top-scoring Contractor(s) as finalists for an oral presentation.

The RFP Coordinator may contact the Contractor for clarification of any portion of the Consultant's proposal.

### **6.5 EVALUATION SCORING AND CRITERIA**

The following weights will be assigned to the proposal for evaluation purposes:

Technical Proposal	
3.1.1 – Transportation Revenue and Policy Assessment:	30 percent
3.1.2 – Public Opinion, Information Assessment:	20 percent
3.1.3 – Technical and Administrative Assessment:	30 percent
Management Proposal	15 percent
Cost Proposal	<u>5 percent</u>
<b>Sub-total</b>	<b>100 percent</b>

Oral presentations, if required, will be scored separately with a maximum value of 30 points.

Evaluation criteria will include such elements as:

1. Understanding of project requirements
2. Proposed project approach and methodology
3. Quality of work plan
4. Feasibility of proposed schedule
5. Description of deliverables
6. Project team structure/internal contracts
7. Firm's relevant experience
8. Staff qualifications and experience
9. References

## **6.6 DISREGARD ORAL REPRESENTATIONS**

The Consultant is instructed to disregard any oral representations it may have received. Proposal evaluation will be based on:

- The material contained in the RFP
- Addenda issued to the RFP

## **6.7 NOTIFICATION TO UNSUCCESSFUL PROPOSERS**

The AGENCY will notify the Apparently Successful Contractor of their selection in writing upon completion of the evaluation process. Individuals or Contractors whose proposals were not selected for further negotiation or award will be notified separately by e-mail or facsimile.

## **6.8 GENERAL TERMS AND CONDITIONS**

The apparently successful contractor will be expected to enter into a contract with the AGENCY which is substantially the same as the contract attached as Exhibit C, including the AGENCY's General Terms and Conditions.

In no event is a consultant to submit its own standard contract terms and conditions as a response to this RFP. The Consultant may submit exceptions or modifications that their firm may have to the proposed terms and conditions.

## **6.9 DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Consultants which submitted a proposal that was not selected will be given the opportunity for a debriefing conference. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be

allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

## **6.10 PROTEST PROCEDURE**

Protests may be made only by Contractors who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Contractor is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 4:30 PM, local time, in Olympia, Washington on the third business day following the debriefing. Protests may be submitted by e-mail or facsimile, but must then be followed by the document with an original signature.

Contractors protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Contractors under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the score; and
- Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Contractor that also submitted a proposal, such Contractor will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
  - Correct the errors and re-evaluate all proposals, and/or
  - Reissue the solicitation document and begin a new process, or
  - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

Upon receipt of a protest, a protest review will be held by the AGENCY. All available facts will be considered and a decision will be issued by the AGENCY Director or his delegate within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant which submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantially compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
  - Correct the errors and re-evaluate all proposals, and/or
  - Reissue the solicitation document and begin a new process, or
  - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **6.11 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Chief of Management Information Services of the AGENCY

and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 RCW, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Consultant's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon applicable laws. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **7. RFP APPENDICES**

Exhibit A Certification and Assurances

Exhibit B Checklist for Responsiveness

Exhibit C Personal Service Contract Format including Exhibit A, Special Terms and Conditions, Exhibit B, General Terms and Conditions (GT&C's), Exhibit C, Scope of Work, and Exhibit D, Budget and Terms of Payment.

**CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. The prices and/or data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
2. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
3. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
6. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

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Signature of Proposer

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Title

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Date

**CHECKLIST FOR RESPONSIVENESS**

- \_\_\_\_\_ Proposal was submitted on or before 3:30 p.m. on June 22, 2012.
- \_\_\_\_\_ Required number of proposal copies – \_\_\_\_\_ – were submitted.
- \_\_\_\_\_ Proposal was formatted into four major sections: letter of submittal, technical proposal, management proposal and cost proposal.
- \_\_\_\_\_ Proposer meets minimum qualifications which are:
- (1) **Transportation Revenue and Policy:** demonstrated experience in federal and state-level transportation tax policy development;
  - (2) **Public Opinion and Information:** demonstrated experience in assessing public opinion and consumer acceptance;
  - (3) **Road User Charge Technology:** demonstrated experience in technologies relevant to implementing a Road User Charge, such as in-vehicle telematics, network communications protocols, back-office transaction processing, toll system development, etc.
- \_\_\_\_\_ Technical Proposal is essentially responsive to core requirements of the RFP.
- \_\_\_\_\_ Management Proposal is essentially responsive to core requirements of the RFP.
- \_\_\_\_\_ Costs are not greater than \$875,000, the maximum disclosed as the project budget.
- \_\_\_\_\_ Letter of Submittal and Certifications and Assurances were signed by an individual authorized to bind the Proposer to a contractual relationship, e.g, the President or Executive Director if a corporation, the managing partner if a partnership, or the sole proprietor if a sole proprietorship.
- \_\_\_\_\_ If Minority- and Women-Owned Business participation is being claimed, a certification from OMWBE is included.
- \_\_\_\_\_ Three business references were provided.

**NOTE:** “Yes” answers must be given to each element above for the proposal to be considered responsive.

**Contract Number KXXX**

**for**

***[describe acquisition]***

**between the**

**Washington State**

**Department of Transportation**

**and**

***[Vendor]***

**Effective Date:** \_\_\_\_\_

***[Add Effective Date]***



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**Schedule B:**    *Statement of Work Template*

**CONTRACT NUMBER KXXX**

**for**

*[describe acquisition]*

**PARTIES**

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through Department of Transportation, an agency of Washington State government (“WSDOT”) located at *[Purchaser address]*, and *[Vendor]*, a *[corporation/sole proprietor or other business form]* licensed to conduct business in the state of Washington (“Vendor”), located at *[Vendor address]* for the purpose of providing *[describe Services to be provided]*.

**RECITALS**

The state of Washington, acting by and through *[Purchaser]*, issued a Request for *[Proposal/Quotation/Qualifications and Quotation] [(RFX)]* dated *[date]*, (Exhibit A) for the purpose of purchasing *[describe Services to be provided]* in accordance with its authority under chapter 43.105 and chapter 39.29 RCW.

*[Vendor]* submitted a timely Response to the *[Purchaser]*’s *[RFX]* (Exhibit B).

The *[Purchaser]* evaluated all properly submitted Responses to the above-referenced *[RFX]* and has identified *[Vendor]* as the apparently successful Vendor.

The *[Purchaser]* has determined that entering into a Contract with *[Vendor]* will meet WSDOT’s needs and will be in WSDOT’s best interest.

*[If not a competitive acquisition, discuss sole source rationale in place of the above Recitals.]*

NOW THEREFORE, WSDOT awards to *[Vendor]* this Personal Services Contract, the terms and conditions of which shall govern Vendor’s furnishing to *[Purchaser]* the *[describe Services to be provided]*. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth below.

“**Business Days and Hours**” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“**Confidential Information**” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data.

**“Contract”** shall mean this document, all schedules and exhibits, Statements of Work, and all amendments hereto.

**“Effective Date”** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**“Personal Services”** or **“Services,”** shall mean professional or technical expertise provided by Vendor to accomplish a specific study, project, task or duties as set forth in this Contract or a Statement of Work. Personal Services shall include those services specified in the IT section of the Office of Financial Management’s *Guide to Personal Service Contracting*, located at <http://www.ofm.wa.gov/contracts/psc/psetoc.htm>.

**“Price”** shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

**“Product(s)”** shall mean any Vendor-supplied equipment, Software, and documentation.

**“Proprietary Information”** shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“Purchaser”** shall mean the state of Washington, Department of Transportation, any division, section, office, unit or other entity of Purchaser or any of the officers or other officials lawfully representing Purchaser.

**“RCW”** shall mean the Revised Code of Washington.

**“Schedule A: Authorized Services and Price List”** shall mean the attachment to this Contract that provides the tasks and/or deliverables assigned under the Statement of Work.

**“State of Washington”** Unless otherwise restricted, includes all members of the State of Washington, State Purchasing Cooperative including where applicable: State agencies, political subdivisions of Washington qualified non-profit corporations, institutions of higher education (e.g., colleges, universities, community & technical colleges) who choose not to purchase independently under RCW 23.B.10.029.

**“Statement of Work”** or **“SOW”** shall mean a separate statement of the work to be accomplished by Vendor under the terms and conditions of this Contract. *[Modify according to the process to be used by Purchaser and include appropriate additional language such as, “Each Statement of Work shall be the result of a second tier competition.”]*

**“Vendor”** shall mean *[Vendor]*, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

**“Vendor Account Manager”** shall mean a representative of Vendor who is assigned as the primary contact person whom the WSDOT Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Vendor Account Manager**.

**“Vendor Contracting Officer”** shall mean the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of Vendor Contracting Officer acting within the limits of his/her authority.

**“Work Product”** shall mean data and products produced under this Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

**“WSDOT”** shall mean the state of Washington, Department of Transportation, any division, section, office, unit or other entity of WSDOT or any of the officers or other officials lawfully representing WSDOT.

**“WSDOT Contract Administrator”** shall mean that WSDOT employee designated to receive legal notices, and to administer, amend, or terminate this Contract.

**“WSDOT Project Manager”** shall mean the WSDOT employee designated to manage and provide oversight of the day-to-day activities under this Contract. The WSDOT Project Manager shall be the primary contact with Vendor concerning Vendor’s performance under this Contract; Provided that, the WSDOT Project Manager does not have authority to accept legal notices on behalf of WSDOT or amend this Contract.

## Contract Term

### 2. Term

#### 2.1. Term of Contract

- a) This Contract’s initial term commences on *Date*, or upon approval from the Office of Financial Management (OFM), whichever comes later.
- b) This Contract’s term expires on *Date* and may be extended for [      (  )] additional [*one (1)*] year, [*for other appropriate time period*] term[s] provided that the extensions shall be at WSDOT’s option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term’s expiration and Vendor accepting such extension prior to the then-current Contract term’s expiration. The total term of this Contract shall not exceed exceed [  (  )] years [*for other appropriate time period*]. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

2.2. Term of Statement of Work (SOW). The term of any SOW executed pursuant to this Contract shall be set forth in the SOW. The term of any SOW shall not exceed the term of this Contract. The SOW may be terminated in accordance with the termination sections of this Contract or as mutually agreed between the parties.

### 3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Ownership/Rights in Data; Access to Data; Vendor's Commitments, Warranties and Representations; Protection of WSDOT’s Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor’s Records;**

**Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Contract.

## Pricing, Invoice and Payment

### 4. Pricing

- 4.1. The total amount expended under this Contract shall not exceed [\_\_\_\_\_] dollars (\$\_\_\_\_\_) *[specify maximum dollar amount]*.

*[Use subsections 4.2-4.6 if utilizing hourly rates set in a Schedule A]*

- 4.2. Vendor agrees to provide the Services at the Prices set forth in Schedule A. No other Prices shall be charged by Vendor for implementation of Vendor's Response.
- 4.3. Prices may not be increased during the initial term of the Contract.
- 4.4. If Vendor reduces its Prices for any of the Services during the term of this Contract, WSDOT shall have the immediate benefit of such lower Prices for new purchases. Vendor shall send notice to the WSDOT Contract Administrator with the reduced Prices within fifteen (15) Business Days *[or other appropriate time period]* of the reduction taking effect. – OR – Vendor shall send updated Prices to the WSDOT *[quarterly/semi-annually]*.
- 4.5. At least least *[one hundred twenty (120)]* calendar days *[or other appropriate time period]* before the end of the then-current term of this Contract, Vendor may propose Service rate increases by written notice to WSDOT Contract Administrator. Price adjustments will be taken into consideration by WSDOT Contract Administrator when determining whether to extend this Contract.

*[Include the following subsection when federal funds are involved or in other special circumstances.]*

- 4.6. Vendor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to WSDOT for subsequent purchases.

*[Use the following subsection in place of 4.1-4.6 if prices are per SOW]*

Vendor agrees to provide the Work under this Contract for the Prices stated in each SOW

- 4.7. WSDOT shall reimburse Vendor for travel and other expenses as identified in this Contract or each SOW in accordance with the then-current rules and regulations set forth in the *Washington State Administrative and Accounting Manual* (<http://www.ofm.wa.gov/policy/poltoec.htm>). Vendor shall provide a detailed itemization of expenses, including description, amounts and dates, and receipts for amounts of fifty dollars (\$50) or more when requesting reimbursement. The amount reimbursed to Vendor is included in calculating the total amount spend under this Contract. Reimbursement of travel expenses shall not exceed \$2000 and is limited to mileage expenses only.

## 5. Advance Payment Prohibited

No advance payment shall be made for Services furnished by Vendor pursuant to this Contract.

## 6. Taxes

- 6.1. WSDOT will pay sales and use taxes, if any, imposed on the Personal Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

## 7. Invoice and Payment

- 7.1. Vendor will submit properly itemized invoices to:  
Washington State Department of Transportation  
*Office Name*  
Attn: *Contact Name*  
*Street Address*  
PO Box *XXXXX*  
Olympia, WA 98504-*XXXX*
- 7.2. Invoices shall provide and itemize, as applicable:
  - a) WSDOT Contract number KXXX;
  - b) Vendor name, address, phone number, and Federal Tax Identification Number;
  - c) Description of Services provided;
  - d) Date(s) that Services were provided, including number of hours worked;
  - e) Vendor's Price for Services; *[If training - Vendor's Price and location for each course session]*
  - f) Net invoice Price for each Service;
  - g) Applicable taxes;
  - h) Other applicable charges;
  - i) Total invoice Price; and
  - j) Payment terms including any available prompt payment discounts.
- 7.3. If expenses are invoiced, Vendor must provide a detailed itemization of those expenses that are reimbursable per each SOW, including description, amounts and dates. Any single expense in the amount of fifty dollars (\$50) or more must be accompanied by a receipt in order to receive reimbursement. (see subsection 4.7 above)
- 7.4. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.

- 7.5. Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.
- 7.6. The WSDOT Contract number KXXX must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.7. WSDOT shall not honor drafts, nor accept goods on a sight draft basis.
- 7.8. If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Vendor's properly prepared invoice, whichever is later.

## **8. Duplicate Payment**

WSDOT shall not pay the Vendor, if the Vendor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

## **9. Overpayments to Vendor**

Vendor shall refund to WSDOT the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, WSDOT may charge Vendor one percent (1%) per month on the amount due, until paid in full.

## **Vendor's Responsibilities**

### **10. Personal Services and Statement of Work**

- 10.1. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.
- 10.2. Content of SOW. Each SOW shall define the scope of Work to be performed under the SOW, the timeline and period of performance for the SOW, the compensation and payment schedule including milestones, specific liquidated damages, Vendor staff roles and responsibilities, WSDOT staff roles and responsibilities, and any additional terms and conditions not contained in this Contract that may be applicable to the Work to be performed under the SOW. Each SOW shall be developed by WSDOT and at WSDOT's sole option and discretion. Any such Work under this Contract shall not be binding or effective until both parties execute an applicable SOW.
- 10.3. Term of SOW. The term of each SOW executed pursuant to this Contract shall be as set forth in the SOW. The term of any SOW shall not exceed the term of this Contract, or any extensions thereto.
- 10.4. Termination. Each SOW may be terminated in accordance with the termination provisions of this Contract, or as mutually agreed in writing between the parties. In addition, each SOW shall terminate concurrent with the termination of this Contract, as provided elsewhere herein.
- 10.5. Modifications. All changes, revisions or upgrades must be agreed to in writing between the WSDOT Project Manager and Vendor Project Manager and subsequently approved as an Amendment as set forth in **Section 21**.



## 11. Commencement of Work

Under the provisions of chapter 39.29 RCW, this Contract is required to be filed with the Office of Financial Management (OFM). In the event OFM fails to approve the Contract, the Contract shall be null and void.

## 12. Ownership/Rights in Data

- 12.1. WSDOT and Vendor agree that all data and work products (collectively called “Work Product”) produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by WSDOT. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 12.2. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to WSDOT the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 12.3. Vendor shall execute all documents and perform such other proper acts as WSDOT may deem necessary to secure for WSDOT the rights pursuant to this section.
- 12.4. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of WSDOT. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

## 13. Access to Data

In compliance with chapter 39.29 RCW, Vendor shall provide access to data generated under this Contract to WSDOT, to the Joint Legislative Audit and Review Committee, and to the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Vendor’s reports, including computer models and methodology for those models.

## 14. Site Security

*[This section should be used if Vendor will be performing any Services on Purchaser’s site.]*

While on WSDOT’s premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations. In addition, Vendor shall ensure compliance with the Information Technology security standards as stated in the Information Technology Manual, M 3017.00. Vendors are responsible for their customer support and engineers' actions and for any misconduct. WSDOT staff must be present when Vendors are on site.

*[This section should be used if Vendor will be performing any Services at WSF sites]*

## **Site Security Coordinator**

Vendor is required to submit a copy of Exhibit C as a request of notification for site access with 2 business days notice. The request form must be submitted to the Site Security Coordinator and must provide the following additional information for each Vendor, or subcontractor, employee: name, date of birth, and driver's license number. Photo ID is mandatory and must be available prior to admittance and at all times while on site. While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations, including escort by a WSDOT employee at all times.

Site Security Coordinator:

Address:

Phone:

Fax:

E-mail:

## **15. Vendor Commitments, Warranties and Representations**

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to WSDOT.

## **16. Protection of WSDOT's Confidential Information**

- 16.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without WSDOT's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by WSDOT. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 16.2. Immediately upon expiration or termination of this Contract, Vendor shall, at WSDOT's option: (i) certify to WSDOT that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to WSDOT; or (iii) take whatever other steps WSDOT requires of Vendor to protect WSDOT's Confidential Information.

- 16.3. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.
- 16.4. WSDOT reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 16.5. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## Contract Administration

### 17. Legal Notices

- 17.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, to the parties at the addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

**To Vendor at:**

*[Vendor]*

**Attn:**

*[Vendor address]*

Phone:

Fax:

E-mail:

**To WSDOT at:**

State of Washington

Department of Transportation

**Attn:**

310 Maple Park Avenue SE

P.O. Box 47408

Olympia, WA 98504-7408

Phone: (360) 705-XXXX

Fax: (360) 705-6848

E-mail: XXXX@wsdot.wa.gov

- 17.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 17.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

## 18. Vendor Account Manager

Vendor shall appoint an Account Manager for WSDOT's account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor's Account Manager will be the principal point of contact for WSDOT concerning Vendor's performance under this Contract. Vendor shall notify WSDOT Contract Administrator and WSDOT Project Manager, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager:

Address:

Phone:

Fax: N/A

E-mail:

## 19. WSDOT Project Manager

WSDOT shall appoint *Name*, or his designee, who will be the WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. WSDOT Project Manager will be the principal contact for Vendor concerning business activities under this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Project Manager assigned to this Contract.

Purchaser Project Manager:

Address:

Phone:

Fax:

E-mail:

## 20. WSDOT Contract Administrator

WSDOT shall appoint *Name*, or her designee, as Contract Administrator for this Contract a designated to receive legal notices, and to administer, amend, or terminate this Contract. All contract documents under KXXX will be processed by the Contract Administrator, or her designee, and submitted to Vendor for acceptance and issuance of product(s) and/or services. WSDOT Contract Administrator is:

WSDOT Contract Administrator:

Address: : 310 Maple Park Avenue SE, Olympia, WA 98504-7408

Phone: (360) 705-XXXX

Fax: (360) 705-6848

E-mail: XXXX@wsdot.wa.gov

## 21. Section Headings, Incorporated Documents and Order of Precedence

- 21.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 21.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
  - a) Schedules A, and B *[if applicable]; [include other Schedules, as appropriate.]*
  - b) *[Purchaser] [RFX]* dated *[date]*;
  - c) Vendor's Response to *[Purchaser] [RFX]* dated *[date]*;
  - d) Any SOW entered into pursuant to this Contract;
  - e) The terms and conditions contained on WSDOT's purchase documents, if used; and
  - f) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Services to WSDOT.
- 21.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Contract;
- c) Schedule A; ; *[include other Schedules, if appropriate]*
- d) *[Purchaser] [RFX]* dated *[date]*;
- e) Any SOW entered into pursuant to this Contract;
- f) Vendor's Response to *[Purchaser] [RFX]* dated *[date]*;
- g) The terms and conditions contained on WSDOT's order documents, if used; and
- h) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to WSDOT and used to effect the sale of Services to WSDOT.

## 22. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

## 23. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract or any SOW under this Contract shall be effective or binding unless it is in writing and signed by WSDOT and Vendor Contracting Officers. Only WSDOT Contract Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of WSDOT.

## 24. Independent Status of Vendor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

## 25. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, *[Thurston, or other appropriate county]* Washington.

## 26. Subcontractors

Vendor may, with prior written permission from WSDOT Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employee, or violations of the **Patent and Copyright Indemnification, Protection of WSDOT's Confidential Information, and Ownership/Rights in Data** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of WSDOT's Confidential Information, Ownership/Rights in Data, Publicity, and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

## 27. Assignment

- 27.1. With the prior written consent of WSDOT Contract Administrator, which consent shall not be unreasonably withheld, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to WSDOT that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.
- 27.2. WSDOT may assign this Contract or SOW to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve WSDOT of any of its duties and obligations hereunder.

## 28. Publicity

- 28.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.
- 28.2. Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.

*[Use of the following subsection is optional.]*

- 28.3. Either Party may use the other Party's name and logo (except for the State seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, provided that this Contract and the relationship between the parties is not misrepresented.

## 29. Review of Vendor's Records

- 29.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's



Business Enterprise participation, protection and use of WSDOT's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.

- 29.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County *[Thurston, or other appropriate county]*. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 29.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 29.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

### **30. Right of Inspection**

Vendor shall provide right of access to its facilities to WSDOT, or any of WSDOT's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

## **General Provisions**

### **31. Patent and Copyright Indemnification**

- 31.1. Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product or Work Product supplied hereunder, or WSDOT's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:
  - a) Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
  - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 31.2. If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or Work Product or to replace or modify the same so that they become

noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product or Work Product and provide WSDOT a refund. In the case of Work Product, Vendor shall refund to WSDOT the entire amount WSDOT paid to Vendor for Vendor's provision of the Work Product. In the case of Product, Vendor shall refund to WSDOT its depreciated value. No termination charges will be payable on such returned Product, and WSDOT will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. *[To ensure the accurate useful life, consult the Washington State Administrative and Accounting Manual, Chapter 30 (Fixed Asset Policies) for Fixed Asset Commodity Class Code List and Useful Life Schedule (<http://www.ofm.wa.gov/policy/30.50.htm>).]* The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by WSDOT shall be refunded by Vendor.

31.3. Vendor has no liability for any claim of infringement arising solely from:

- a) Vendor's compliance with any designs, specifications or instructions of WSDOT;
- b) Modification of the Product or Work Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or
- c) Use of the Product or Work Product in a way not specified by Vendor;

unless the claim arose against Vendor's Product or Work Product independently of any of these specified actions.

## **32. Save Harmless**

Vendor shall defend, indemnify, and save WSDOT harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save WSDOT harmless shall not be eliminated or reduced by any alleged concurrent WSDOT negligence.

*[At Vendor's insistence, and after Purchaser has evaluated risks and determined that a limited save harmless clause is acceptable, the last sentence may be replaced with the following: "Vendor shall be required to defend, indemnify, and save Purchaser harmless only to the extent claim is caused in whole or in part by Vendor's negligent acts or omissions."]*

## **33. Insurance**

33.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination.



- 33.2. The minimum acceptable limits shall be as indicated below, for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
  - b) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
- 33.3. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name WSDOT as an additional insured on all general liability policies. Such policies shall also reference this Contract number KXXX and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to WSDOT by the insurer.
- 33.4. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 33.5. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 33.6. Vendor shall furnish to WSDOT copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at WSDOT's sole option, result in this Contract's termination.
- 33.7. By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

#### **34. Industrial Insurance Coverage**

*[If Vendor has operations in Washington, include this section. If Vendor has no operations in Washington, do not include this section.]*

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSDOT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

#### **35. Licensing Standards**

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

### 36. Antitrust Violations

Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by WSDOT. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods and Services purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

### 37. Compliance with Civil Rights Laws

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with WSDOT.

### 38. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

### 39. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

### 40. Treatment of Assets

- 40.1. Title to all property furnished by WSDOT shall remain with WSDOT. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in WSDOT pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in WSDOT.
- 40.2. Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved by WSDOT, be used only for the performance of this Contract.
- 40.3. Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 40.4. Upon loss or destruction of, or damage to any WSDOT property, Vendor shall notify WSDOT thereof and shall take all reasonable steps to protect that property from further damage.
- 40.5. Vendor shall surrender to WSDOT all WSDOT property prior to completion, termination, or cancellation of this Contract.

- 40.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

#### **41. Vendor's Proprietary Information**

Vendor acknowledges that WSDOT is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.56 RCW, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, WSDOT will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

### **Disputes and Remedies**

#### **42. Disputes**

*[If this is a simple contract for \$5,000 or less, only the following section need be included.]*

In the event a dispute arises under this Contract, it shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto. WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

*[If this is a complex contract or is for more than \$5,000 use the following subsections.]*

- 42.1. In the event a bona fide dispute concerning a question of fact arises between WSDOT and Vendor and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
- 42.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

*[Include the following subsection whenever possible so that arbitration will be binding upon the parties.]*

- 42.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 42.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. . *[If the previous subsection on the decision of the Dispute Resolution Panel being binding is omitted from the Contract, add: “Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.”]*
- 42.5. WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 42.6. If the subject of the dispute is the amount due and payable by WSDOT for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided WSDOT pays Vendor the amount WSDOT, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

#### **43. Attorneys’ Fees and Costs**

- 43.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys’ fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 43.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys’ fees incurred as a result of the alternative dispute resolution method.

#### **44. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

#### **45. Failure to Perform**

If Vendor fails to perform any substantial obligation under this Contract, WSDOT shall give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then WSDOT may withhold all monies due and payable to Vendor, without penalty to WSDOT, until such Failure to Perform is cured or otherwise resolved.

#### **46. Limitation of Liability**

- 46.1. The parties agree that neither Vendor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated

damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.

- 46.2. Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor or WSDOT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, WSDOT, or their respective Subcontractors.
- 46.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 46.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

## Contract Termination

### 47. Termination for Default

- 47.1. If either WSDOT or Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. WSDOT reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds during investigation of any alleged Vendor compliance breach and pending corrective action by Vendor or a decision by WSDOT to terminate the Contract.
- 47.2. In the event of termination of this Contract by WSDOT, WSDOT shall have the right to procure the Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to WSDOT resulting from Vendor's breach. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.
- 47.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 47.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

#### **48. Termination for Convenience**

When, at the sole discretion of WSDOT, it is in the best interest of the State, WSDOT Contract Administrator may terminate this Contract, including all Statement(s) of Work, in whole or in part, by ten (10) Business Days' written notice to Vendor. If this Contract is so terminated, WSDOT is liable only for payments required by the terms of this Contract or any SOW for Services received and accepted by WSDOT prior to the effective date of termination.

#### **49. Termination for Withdrawal of Authority**

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

#### **50. Termination for Non-Allocation of Funds**

If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may terminate this Contract by seven (7) calendar days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Services from a third party.

#### **51. Termination for Conflict of Interest**

WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Contract.

#### **52. Termination Procedure**

- 52.1. In addition to the procedures set forth below, if WSDOT terminates this Contract, Vendor shall follow any procedures WSDOT specifies in WSDOT's Notice of Termination.
- 52.2. Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property or Work Product specifically produced or acquired for the performance of such part of this Contract as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 52.3. Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon price, if separately stated, for the Services received by WSDOT, provided that in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Contract. WSDOT may



withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.

- 52.4. Vendor shall pay amounts due WSDOT as the result of termination within thirty (30) calendar days of notice of amounts due. If Vendor fails to make timely payment, WSDOT may charge interest on the amounts due at one percent (1%) per month until paid in full.

### **53. Covenant Against Contingent Fees**

*[Include this section when federal funds are used for the purchase or in other special circumstances.]*

- 53.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 53.2. In the event Vendor breaches this section, WSDOT shall have the right to either annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

## **Contract Execution**

### **54. Authority to Bind**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

### **55. Counterparts**

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

***In Witness Whereof***, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

**This Contract is effective this \_\_\_\_ day of \_\_\_\_\_, 2007.**

**Approved**  
State of Washington  
Department of Transportation

**Approved**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



**Schedule A**  
***Authorized Services and Price List***

**For**

**Contract Number K107**  
**with**  
**Capacity Consulting**

## **Schedule B**

### ***Statement of Work Template***

The details of the specific services, project or tasks should be negotiated by WSDOT and Capacity Consulting for each engagement under Contract K107 and memorialized in an SOW.

*The Contract requires that the SOW reference the Contract number and address the following areas:*

***Project or Task Objectives***

***Scope and Description of Work, including Deliverables***

***Timeline and Period of Performance***

***Compensation and Payment***

***Vendor Staff, Roles and Responsibilities***

***Purchaser Staff, Roles and Responsibilities***

***Additional Terms and Conditions Specific to this SOW***